

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5**

AMERICAN CIVIL LIBERTIES UNION, INC.

and

NONPROFIT PROFESSIONAL EMPLOYEES
UNION (NPEU), INTERNATIONAL FEDERATION
OF PROFESSIONAL & TECHNICAL ENGINEERS
(IFPTE) LOCAL 70 A/W INTERNATIONAL
FEDERATION OF PROFESSIONAL & TECHNICAL
ENGINEERS, AFL-CIO, CLC

Cases 05-CA-300367
and
05-CA-302762

**ORDER CONSOLIDATING CASES,
CONSOLIDATED COMPLAINT AND NOTICE OF HEARING**

Pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board (the Board) and to avoid unnecessary costs or delay, IT IS ORDERED that Cases 05-CA-300367 and 05-CA-302762, which are based on charges filed by Nonprofit Professional Employees Union (NPEU), International Federation of Professional & Technical Engineers (IFPTE) Local 70 a/w International Federation of Professional & Technical Engineers, AFL-CIO, CLC (the Charging Party), against American Civil Liberties Union, Inc. (Respondent), are consolidated.

This Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, which is based on these charges, is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq., and Section 102.15 of the Board's Rules and Regulations, and alleges that Respondent has violated the Act as described below.

1. (a) The charge in Case 05-CA-300367 was filed by the Charging Party on July 28, 2022, and a copy was served on Respondent by U.S. mail on July 29, 2022.

(b) The first amended charge in Case 05-CA-300367 was filed by the Charging Party on August 18, 2022, and a copy was served on Respondent by U.S. mail on August 25, 2022.

(c) The second amended charge in Case 05-CA-300367 was filed by the Charging Party on December 14, 2022, and a copy was served on Respondent by U.S. mail on December 16, 2022.

(d) The charge in Case 05-CA-302762 was filed by the Charging Party on August 18, 2022, and a copy was served on Respondent by U.S. mail on September 7, 2022.

2. (a) At all material times, Respondent has been a nonprofit corporation with an office and place of business in Washington, D.C., and has been engaged in social and political advocacy related to the protection of civil liberties throughout the United States.

(b) In conducting its operations during the 12-month period ending February 28, 2023, Respondent derived gross revenues in excess of \$250,000.

(c) In conducting its operations during the period described above in paragraph 2(b), Respondent purchased and received at its Washington, D.C. facility products, goods, and materials valued in excess of \$5,000 directly from points outside the District of Columbia.

(d) During the period described in paragraph 2(b), Respondent has conducted its business operations described above in paragraph 2(a) in Washington, D.C., and the Board asserts plenary jurisdiction over enterprises in Washington, D.C.

(e) At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), (7) of the Act.

3. At all material times, the Charging Party has been a labor organization within the meaning of Section 2(5) of the Act.

4. At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act, and agents of Respondent within the meaning of Section 2(13) of the Act.

- (a) (b) (6), (b) (7)(C) - (b) (6), (b) (7)(C)
- (b) (b) (6), (b) (7)(C) - (b) (6), (b) (7)(C)
- (c) (b) (6), (b) (7)(C) - (b) (6), (b) (7)(C)
- (d) (b) (6), (b) (7)(C) - (b) (6), (b) (7)(C)
- (e) (b) (6), (b) (7)(C) - (b) (6), (b) (7)(C)
- (f) (b) (6), (b) (7)(C) - (b) (6), (b) (7)(C)
- (g) (b) (6), (b) (7)(C) - (b) (6), (b) (7)(C)
- (h) (b) (6), (b) (7)(C) - (b) (6), (b) (7)(C)
- (i) (b) (6), (b) (7)(C) - (b) (6), (b) (7)(C)

5. (a) The following employees of Respondent (the Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employees of Respondent in the classifications listed in Appendix A to the Letter of Understanding Voluntary Recognition through Card Check Between Respondent and the Charging Party; but excluding managerial employees, temporary employees, confidential employees, guards, supervisors as defined in the Act, all employees represented by another labor organization, and all other employees of Respondent.

(b) Since May 11, 2021, and at all material times, Respondent has recognized the Charging Party as the exclusive collective-bargaining representative of the Unit. This recognition has been embodied in a recognition agreement dated April 30, 2021.

(c) At all times since May 11, 2021, based on Section 9(a) of the Act, the Charging Party has been the exclusive collective-bargaining representative of the Unit.

6. Throughout 2020, 2021, and until about May 2022, Respondent's employee (b) (6), (b) (7)(C) engaged in concerted activities with other employees for the purposes of mutual aid and protection by concertedly complaining about wages, hours, and terms and conditions of employment.

7. (a) About (b) (6), (b) (7)(C), 2022, Respondent denied a transfer of its employee (b) (6), (b) (7)(C)

(b) About (b) (6), (b) (7)(C) 2022, Respondent imposed discretionary discipline on its Unit employee (b) (6), (b) (7)(C) by discharging (b) (6), (b) (7)(C)

(c) Respondent engaged in the conduct described above in paragraphs 7(a) and 7(b) because the named employee engaged in concerted activities, and to discourage employees from engaging in these activities.

(d) Respondent engaged in the conduct described above in paragraph 7(b) without providing notice to the Charging Party and without affording the Charging Party an opportunity to bargain with Respondent.

(e) The subjects set forth above in paragraph 7(b) relate to the wages, hours, and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

8. By the conduct described above in paragraph 7(a) through 7(c), Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

9. By the conduct described above in paragraphs 7(b) and 7(d), Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

10. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be **received by this office on or before March 27, 2023**. Respondent also must serve a copy of the answer on each of the other parties.

The answer must be filed electronically through the Agency's website. To file electronically, go to www.nlr.gov, click on E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. Responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within

three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on **July 18, 2023, at 10:00 a.m. in Board Hearing Room 6001, 1015 Half Street SE, Washington, D.C. 20570**, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this consolidated complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated at Baltimore, Maryland this 13th day of March 2023.

(SEAL)

/s/ *Sean R. Marshall*

Sean R. Marshall, Regional Director
National Labor Relations Board, Region 5
Bank of America Center, Tower II
100 S. Charles Street, Suite 600
Baltimore, Maryland 21201

Attachments

Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. **You may be represented at this hearing by an attorney or other representative.** If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link: www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf.

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at www.nlr.gov, click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement. The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

I. BEFORE THE HEARING

The rules pertaining to the Board's pre-hearing procedures, including rules concerning filing an answer, requesting a postponement, filing other motions, and obtaining subpoenas to compel the attendance of witnesses and production of documents from other parties, may be found at Sections 102.20 through 102.32 of the Board's Rules and Regulations. In addition, you should be aware of the following:

- **Special Needs:** If you or any of the witnesses you wish to have testify at the hearing have special needs and require auxiliary aids to participate in the hearing, you should notify the Regional Director as soon as possible and request the necessary assistance. Assistance will be provided to persons who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603.
- **Pre-hearing Conference:** One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.

II. DURING THE HEARING

The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- **Witnesses and Evidence:** At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.
- **Exhibits:** Each exhibit offered in evidence must be provided in duplicate to the court reporter and a copy of each of each exhibit should be supplied to the ALJ and each party when the exhibit is offered in

evidence. If a copy of any exhibit is not available when the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the ALJ before the close of hearing. If a copy is not submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

- **Transcripts:** An official court reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the ALJ for approval. Everything said at the hearing while the hearing is in session will be recorded by the official reporter unless the ALJ specifically directs off-the-record discussion. If any party wishes to make off-the-record statements, a request to go off the record should be directed to the ALJ.

- **Oral Argument:** You are entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. Alternatively, the ALJ may ask for oral argument if, at the close of the hearing, if it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.

- **Date for Filing Post-Hearing Brief:** Before the hearing closes, you may request to file a written brief or proposed findings and conclusions, or both, with the ALJ. The ALJ has the discretion to grant this request and to will set a deadline for filing, up to 35 days.

III. AFTER THE HEARING

The Rules pertaining to filing post-hearing briefs and the procedures after the ALJ issues a decision are found at Sections 102.42 through 102.48 of the Board's Rules and Regulations. Please note in particular the following:

- **Extension of Time for Filing Brief with the ALJ:** If you need an extension of time to file a post-hearing brief, you must follow Section 102.42 of the Board's Rules and Regulations, which requires you to file a request with the appropriate chief or associate chief administrative law judge, depending on where the trial occurred. You must immediately serve a copy of any request for an extension of time on all other parties and furnish proof of that service with your request. You are encouraged to seek the agreement of the other parties and state their positions in your request.

- **ALJ's Decision:** In due course, the ALJ will prepare and file with the Board a decision in this matter. Upon receipt of this decision, the Board will enter an order transferring the case to the Board and specifying when exceptions are due to the ALJ's decision. The Board will serve copies of that order and the ALJ's decision on all parties.

- **Exceptions to the ALJ's Decision:** The procedure to be followed with respect to appealing all or any part of the ALJ's decision (by filing exceptions with the Board), submitting briefs, requests for oral argument before the Board, and related matters is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be provided to the parties with the order transferring the matter to the Board.

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
NOTICE

Case 05-CA-300367 and 05-CA-302762

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements **will not be granted** unless good and sufficient grounds are shown **and** the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds must be set forth in **detail**;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and
- (5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

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UNITED STATES OF AMERICA
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CASES 05-CA-300367
05-CA-302762

NONPROFIT PROFESSIONAL EMPLOYEES
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ENGINEERS, AFL-CIO, CLC

ANSWER

Respondent, American Civil Liberties Union, Inc., by its attorneys, as and for its Answer to the Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, hereby alleges:

1. (a) Respondent denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1(a) of the Complaint, except admits that a copy of the charge in case 05-CA-300367 was served upon Respondent by U.S. Mail on or about July 29, 2022.

(b) Respondent denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1(b) of the Complaint, except admits that a copy of the first amended charge in case 05-CA-300367 was served upon Respondent by U.S. Mail on or about August 25, 2022.

(c) Respondent denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1(c) of the Complaint,

except admits that a copy of the second amended charge in case 05-CA-300367 was served upon Respondent by U.S. Mail on or about December 16, 2022.

(d) Respondent denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1(d) of the Complaint, except admits that a copy of the charge in case 05-CA-302762 was served upon Respondent by U.S. Mail on or about September 7, 2022.

2. (a) Respondent admits the allegations contained in paragraph 2(a) of the Complaint.

(b) Respondent admits the allegations contained in paragraph 2(b) of the Complaint.

(c) Respondent admits the allegations contained in paragraph 2(c) of the Complaint.

(d) Respondent denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2(d) of the Complaint, except admits that during the period described in paragraph 2(b) it conducted certain business operations described above in paragraph 2(a) in Washington, D.C.

(e) Respondent admits the allegations contained in paragraph 2(e) of the Complaint

3. Respondent admits the allegations contained in paragraph 3 of the Complaint, except denies knowledge or information sufficient to form a belief as to the meaning of “all material times.”

4. Respondent admits the allegations contained in paragraph 4 of the Complaint, except denies knowledge or information sufficient to form a belief as to the meaning of “all material times.”

5. (a) Respondent admits the allegations contained in paragraph 5(a) of the Complaint.

(b) Respondent admits the allegations contained in paragraph 5(b) of the Complaint.

(c) Respondent admits the allegations contained in paragraph 5(c) of the Complaint.

6. Respondent denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6 of the Complaint, except admits that at certain times its employee (b) (6), (b) (7)(C) lodged certain complaints with Respondent.

7. (a) Respondent denies the allegations contained in paragraph 7(a) of the Complaint.

(b) Respondent denies the allegations contained in paragraph 7(b) of the Complaint, except admits that on or about (b) (6), (b) (7)(C) 2022 Respondent discharged (b) (6), (b) (7)(C)

(c) Respondent denies the allegations contained in paragraph 7(c) of the Complaint.

(d) Respondent denies the allegations contained in paragraph 7(d) of the Complaint.

(e) Respondent denies the allegations contained in paragraph 7(e) of the Complaint.

8. Respondent denies the allegations contained in paragraph 8 of the Complaint.

9. Respondent denies the allegations contained in paragraph 9 of the Complaint.

10. Respondent denies the allegations contained in paragraph 10 of the Complaint.

AFFIRMATIVE AND SEPARATE DEFENSES

Assertion of an affirmative or other defense by Respondent does not constitute the assumption by Respondent of any burden of proof properly allocated to the General Counsel of the National Labor Relations Board or the Charging Party, as the case may be.

FIRST: The allegations of the Complaint fail to state a claim for which relief may be granted.

SECOND – The allegations of the Complaint are barred in whole or in part by the limitation of time in Section 10(b) of the Act.

THIRD – The Complaint must be dismissed, in whole or in part, because its employee (b) (6), (b) (7)(C) was terminated for just cause.

FOURTH – The Complaint should be deferred, in whole or in part, to the binding arbitration process in which the parties currently are engaged.

FIFTH – The Complaint must be dismissed because the General Counsel lacked the authority to prosecute the Complaint in that the President could not remove the predecessor General Counsel without cause during the four-year term to which he was appointed.

WHEREFORE, Respondent AMERICAN CIVIL LIBERTIES UNION, INC., requests that the Consolidated Complaint be dismissed in its entirety and that Respondent have such other, further and additional relief as may be warranted.

Dated: New York, New York.
March 27, 2023

Respectfully submitted,

KAUFF MCGUIRE & MARGOLIS LLP

By: 

Kenneth A. Margolis

950 Third Avenue
Fourteenth Floor
New York, NY 10022
(212) 644-1010

Attorneys for Respondent
AMERICAN CIVIL LIBERTIES
UNION, INC.

CERTIFICATION OF SERVICE BY E-FILING & ELECTRONIC MAIL

The undersigned, an attorney admitted to practice before the Courts of the State of New York, affirms under penalty of perjury, that, on March 27, 2023, pursuant to the Board's e-filing rules, he caused a true and correct copy of the attached Answer to be served on behalf of Respondent upon the Charging Party and Counsel for the Charging Party via electronic mail at the following addresses designated for such purposes:

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Richard Bialczak, Esq,
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Dated: March 27, 2023
New York, New York

Kenneth A. Margolis
Kenneth A. Margolis